



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **15 CFR Part 922**

**[Docket No. 221216-0275]**

**RIN 0648-BJ62**

### **Proposed Lake Ontario National Marine Sanctuary; Notice of Proposed Rulemaking**

**AGENCY:** Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed Rule.

**SUMMARY:** NOAA proposes to designate the Lake Ontario National Marine Sanctuary (LONMS) in eastern Lake Ontario to recognize the national significance of the area's historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. The proposed sanctuary boundary would encompass 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) of eastern Lake Ontario waters and would border Wayne, Cayuga, Oswego, and Jefferson counties. NOAA would co-manage LONMS with New York State. NOAA also proposes regulations to implement the national marine sanctuary designation and establish its terms of designation. This proposed rule follows NOAA's publication of a draft environmental impact statement (DEIS) and draft management plan (DMP) in July 2021. NOAA is soliciting public comment on the proposed rule, as well as possible names for the sanctuary.

**DATES:** *Comments:* Send comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *Federal Register*].

*Public Meetings:* NOAA will host four public meetings: three in-person meetings and one virtual meeting. The in-person scoping meetings will occur at the following dates and times:

- Oswego, NY

Date: February 28, 2023

Location: Lake Ontario Event and Conference Center

Address: 26 E. 1st St., Oswego, NY 13126

Time: 6:30 p.m. - 8 p.m. Eastern Time

- Wolcott, NY

Date: March 1, 2023

Location: Wolcott Elks Lodge No. 1763

Address: 6161 W. Port Bay Rd, Wolcott, NY 14590

Time: 6:30 p.m. - 8 p.m. Eastern Time

- Watertown, NY

Date: March 2, 2023

Location: Jefferson Community College

Address: 1220 Coffeen St., Sturtz Theater, Room 4-111, Watertown, NY 13601

Time: 6:30 p.m. - 8 p.m. Eastern Time

The virtual public scoping meeting will occur at the following dates and time:

- Wednesday, March 8, 2023, 6:30 p.m. to 8 p.m. Eastern Time

Please check <https://sanctuaries.noaa.gov/lake-ontario> for meeting links and the most up-to-date information, should plans for these public meetings change. NOAA may end a virtual or in-person meeting before the time noted above if all participants have

concluded their oral comments.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NOS-2021-0050, by any of the following methods:

- Federal e-Rulemaking Portal: <https://www.regulations.gov> and search for “NOAA–NOS–2021–0050”. Follow the instructions for sending comments.
- Mail: Send any hard copy public comments by mail to Ellen Brody, Great Lakes Regional Coordinator, 4840 South State Road, Ann Arbor, MI 48108–9719.
- Public Meetings: Provide oral comments during public meetings, as described under DATES. Webinar registration details and additional information about how to participate in these public scoping meetings is available at:

<https://sanctuaries.noaa.gov/lake-ontario>

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Comments that are not responsive or contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ellen Brody, 734–741– 2270, [ellen.brody@noaa.gov](mailto:ellen.brody@noaa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Introduction**

#### *A. Background*

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 et seq.)

authorizes the Secretary of Commerce (Secretary) to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archaeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary to NOAA's Office of National Marine Sanctuaries (ONMS). The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System.

NOAA proposes to designate the Lake Ontario National Marine Sanctuary (LONMS) in eastern Lake Ontario to recognize the national significance of the area's historical, archaeological, and cultural resources and to manage this special place as part of the National Marine Sanctuary System. To designate a national marine sanctuary, NOAA would set a boundary to delineate the borders of the sanctuary; run the site as a part of the national marine sanctuary system under the National Marine Sanctuaries Act; establish site-specific regulations to protect underwater cultural and historical resources; and implement a management plan that provides a comprehensive, long-term plan to manage the sanctuary and interpret the significance of the resources and surrounding area to the public. The proposed sanctuary boundary would encompass 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) of eastern Lake Ontario waters and would border Wayne, Cayuga, Oswego, and Jefferson counties. NOAA would co-manage LONMS with New York State.

Eastern Lake Ontario represents a diverse array of important events in our Nation's history including military conflicts, maritime innovation, and American expansion to the west. The eastern corridor is one of the most historically significant regions in the Great Lakes and the country. This area has been critical to maritime trade and transportation for centuries, beginning with the canoes and boats of early Indigenous peoples. Approximately 1,000 years ago, the distinct cultural groups living along the lake

shoreline had unified as the Haudenosaunee Confederacy. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the proposed boundaries of the sanctuary. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core. One of the more tangible and identifiable assets of this history were the vessels that plied Lake Ontario's waters. Carrying goods, people, and the community histories of the Great Lakes region, some of these vessels encountered treacherous conditions and sank. The cold, fresh water of the Great Lakes has preserved a number of these shipwrecks along with their historical and cultural context, making them a cornerstone for the protection, study, and interpretation offered by national marine sanctuaries.

LONMS would contain 43 known shipwrecks and one known submerged aircraft, including one shipwreck (*St. Peter*) listed on the National Register of Historic Places and another listed as a New York State Submerged Cultural Preserve and Dive Site (*David Mills*). This area may also include approximately 20 additional potential shipwreck sites (shipwrecks which likely exist, but additional research is needed to verify and describe them); three aircraft; and several other underwater archaeological sites, such as remnants of piers, aids to navigation, and historic properties that may be of religious and cultural significance to Indigenous Nations and Tribes. At this time, NOAA is unaware of any foreign sovereign shipwrecks located within the proposed boundary.

The exceptional archaeological, historical, and recreational value of these assets spans centuries, as indicated by the commercial schooner *Lady Washington* that was built in 1797, and U.S. Coast Guard Cable Boat 56022, which was lost under tow in 1977. The sanctuary would also include early American commercial vessels, submerged

battlefields from the Seven Years War and War of 1812 (at Oswego and Sackets Harbor, respectively), and stellar examples of innovative technologies in shipbuilding from the last two centuries.

### *B. Need for Action*

The National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce (Secretary) to designate new national marine sanctuaries to meet the purposes and policies of the NMSA, including:

- “to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance and to manage these areas as the National Marine Sanctuary System” (16 U.S.C. 1431(b)(1));
- “to provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities” (16 U.S.C. 1431(b)(2)); and
- “to facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities” (16 U.S.C. 1431(b)(6)).

The nationally significant underwater cultural and historical resources within the proposed sanctuary require long-term protection and management to reduce threats that would adversely affect their historical, cultural, archaeological, recreational, and educational value. For example, many of the shipwrecks in the sanctuary, which have a high level of structural integrity as a result of the preservative properties of the cold, fresh water of Lake Ontario and the great depth at which several of them lie, are threatened by both natural processes and human activities. These threats include wind, waves, currents, storms, and ice; invasive species such as zebra and quagga mussels, which currently cover many shipwrecks; anchors and grappling hooks from dive boats;

poorly attached mooring lines; artifact removal; artifacts being moved within a shipwreck site; and entanglement from remotely operated vehicle tethers and fishing gear.

Accordingly, NOAA is proposing to designate this area as a national marine sanctuary to: (1) manage and protect nationally significant underwater cultural and historical resources through a regulatory and nonregulatory framework; (2) document, further locate, and monitor these resources; (3) provide interpretation of their cultural, historical, and educational value to the public; (4) promote public stewardship and responsible use of these resources for their recreational value.

Establishing a national marine sanctuary in eastern Lake Ontario would: a) allow NOAA to complement and supplement existing state and Federal efforts to protect underwater cultural and historical resources and actively manage, study, and interpret them for the public; b) through outreach and communication, recognize and promote this area's nationally significant historical and cultural properties; c) provide access to NOAA's extended network of scientific expertise and technological resources, enhance ongoing research, and provide an umbrella for the coordination of these activities; d) create and build upon existing educational initiatives and provide programming and technology for students, teachers, and the general public across the country; e) enhance and facilitate public stewardship of underwater cultural and historical resources; and f) bolster broader lake conservation efforts and stimulate maritime heritage-related tourism in the many communities that have embraced their centuries-long relationship with Lake Ontario, the St. Lawrence River, the Great Lakes region, and the Nation.

### *C. Designation Process*

#### *1. Notice of Intent to Designate a National Marine Sanctuary*

On January 17, 2017, leaders of four New York counties (Oswego, Jefferson, Cayuga, and Wayne) and the City of Oswego, with support from the Governor of New York, submitted a nomination to NOAA through the Sanctuary Nomination

Process (SNP) (79 FR 33851) asking NOAA to consider designating a national marine sanctuary in eastern Lake Ontario waters to protect, and increase awareness of, a nationally significant collection of submerged maritime heritage resources; build new partnerships for research and education; and promote tourism and economic development opportunities. NOAA completed its review of the nomination and, on March 21, 2017, added the area to the inventory of nominations eligible for designation. All nominations submitted to NOAA can be found at: <http://www.nominate.noaa.gov/nominations>.

NOAA's decision to initiate a designation is based on a number of factors, including the need for resource protection, community and stakeholder support, and agency capacity. The Lake Ontario nomination encapsulates the essence of our maritime culture from the early years of our nation. The proposed Lake Ontario National Marine Sanctuary includes unique and significant submerged cultural resources within a corridor that is one of the most historically significant regions in the Great Lakes and the North American continent. NOAA chose to move forward with designating LONMS because it represented the goals of the National Marine Sanctuaries Act and met the needs of diversity of sites by capturing historical and cultural resources not represented elsewhere in the national marine sanctuary system. NOAA also considered the excellent condition of the resources located within the nominated area.

On April 17, 2019, NOAA began the sanctuary designation process for the proposed Lake Ontario National Marine Sanctuary by publishing of a notice of intent (84 FR 16004, April 17, 2019) to prepare a draft environmental impact statement (DEIS) and to initiate the public scoping process as required by the National Marine Sanctuaries Act (NMSA) and the National Environmental Policy Act (NEPA). The notice of intent also announced NOAA's intent to fulfill its responsibilities under the requirements of the National Historic Preservation Act (NHPA).



NOAA also established a Sanctuary Advisory Council in 2020 to bring members of the local community together to provide advice to NOAA, to serve as a liaison with the nominating community, and to assist in guiding NOAA through the designation process. The council consists of 15 members in the following seats: citizens-at-large, divers/dive clubs/shipwreck explorers, maritime history, education, tourism, economic development, recreational fishing, and shoreline property owners. In addition, representatives of the four counties, the city of Oswego, the U.S. Coast Guard, the Port of Oswego Authority, New York Sea Grant, and the state of New York are non-voting members.

## *2. Draft Environmental Impact Statement and Public Comment*

In accordance with NEPA (42 U.S.C. 4321 et seq.) and the NMSA (16 U.S.C. 1434), NOAA published a DEIS for the proposed national marine sanctuary designation on July 7, 2021 (86 FR 35757). The DEIS (<https://nmssanctuaries.blob.core.windows.net/sanctuaries-prod/media/docs/20210701-proposed-lake-ontario-national-marine-sanctuary-draft-environmental-impact-statement.pdf>) described the purpose and need for the proposed action, identified a range of alternatives, evaluated the environmental consequences of the proposed designation of a national marine sanctuary, and provided an assessment of resources and uses in the area. NOAA included three alternatives in the DEIS: 1) a “no action” alternative where the area would not become a national marine sanctuary; 2) an alternative which would include 1,349 nm<sup>2</sup> (1,786 mi<sup>2</sup>) in eastern Lake Ontario and the Thousand Islands region of the St. Lawrence River; and 3) an alternative that would include 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) in eastern Lake Ontario without the St. Lawrence River. The DEIS also described proposed regulatory concepts and a draft management plan to identify the tools employed by NOAA to manage the sanctuary, such as research and monitoring, education and outreach, tourism and economic development, sanctuary resource protection, and

sanctuary operations. NOAA did not select a preferred alternative in the DEIS.

In the DEIS, NOAA evaluated the impacts of each alternative on underwater cultural resources, human uses and socioeconomic resources, physical resources, and biological resources. The various levels of impact used in the DEIS were: negligible, which means the impact on a resource can barely be detected (whether beneficial or adverse) and are therefore discountable; moderate, which means that minor impacts do not rise to the level of significance as defined in significant; and significant, which means that an impact results in an alteration in the state of a resource. Long-term or permanent impacts or impacts with a high intensity or frequency of alteration to a resource, whether beneficial or adverse, would be considered significant. Beneficial impacts are impacts that promote favorable conditions for the resource. Adverse impacts are impacts that are contrary to the goals, objectives, management policies, and practices of NOAA and the public interest or welfare, as well as those that are likely to be damaging, harmful, or unfavorable to one or more of the resources. NOAA's analysis under NEPA concluded that there would be no significant adverse impacts to biological and physical resources, cultural and historic resources, marine area use, recreation, or socioeconomics under any alternative. NOAA anticipates significant long-term beneficial impacts if the proposed action to designate a national marine sanctuary is implemented. For more information about these impacts and terminology definitions, please refer to the DEIS on pgs. 93 and 94.

During the public comment period on the DEIS, NOAA received 87 separate comments either through [www.regulations.gov](http://www.regulations.gov), by mail, or during virtual public meetings.<sup>1</sup> In general, comments were strongly supportive of sanctuary designation.

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<sup>1</sup> Public comments are available for review at <https://www.regulations.gov/docket/NOAA-NOS-2021-0050>. The comment period on the DEIS started on July 7, 2021 and ended on September 10, 2021.

Commenters cited several reasons for this support, including: long-term protection for nationally significant shipwrecks; increased accessibility to these wrecks; potential for national recognition of the area to support local tourism and economies; Federal resources to support research on shipwrecks; establishing a mooring program; and, potential educational opportunities for students to study cultural and biological resources in the lake. Local, state, and governments and organizations also expressed strong support of the proposed sanctuary, offering opportunities to partner for education, research, outreach, and other activities. New York state agencies expressed commitment to be key partners in co-management and implementation of the proposed national marine sanctuary. The Lake Ontario Sanctuary Advisory Council unanimously passed a resolution with comments on the DEIS, including a preference for including the Thousand Islands Region of the St. Lawrence River, as long as it would not adversely impact commercial shipping.

Several commenters were supportive of designating LONMS but expressed concern about potential safety issues and navigational challenges in the St. Lawrence Seaway shipping channel if designation led to an increase in the number of divers and other recreational users. Some commenters also noted that installing surface mooring buoys in navigation channels would create a navigation hazard for vessels and asked NOAA to consider excluding navigation structures and dredge disposal sites from the proposed sanctuary. Other commenters expressed concern that there is not enough public interest in local shipwrecks; the shipwrecks are already adequately protected by other laws; most of the wrecks have already been found by private explorers (and, thus, NOAA research was not needed); and that the level of economic development would not be high enough to justify the creation of a national marine sanctuary in the area.

NOAA received a few comments specific to the LONMS boundary proposals. The majority of these comments supported the larger boundary option that

includes the Thousand Island region of the St. Lawrence River. A few commenters supported the boundary option that only includes eastern Lake Ontario.

NOAA will use the public comments it receives to shape the final management plan, final rule, and final EIS. NOAA will respond to all public comments on the DEIS, draft management plan, and proposed rulemaking in the final EIS and in the final rulemaking.

### *3. Development of Proposed Regulations and Terms of Designation*

NOAA developed this proposed rulemaking and the sanctuary terms of designation based on input from public comments submitted on the DEIS, interagency coordination, and internal staff analysis and expertise.

The DEIS described possible regulatory concepts for the proposed sanctuary and invited the public to comment on them. Based on internal staff expertise and comments received on the DEIS, NOAA is now proposing specific regulatory text for the sanctuary, including boundary coordinates, definitions, prohibitions, and permitting procedures in this rulemaking. The proposed regulations are generally the same as the regulatory concepts, with some modifications and additions to improve clarity, update terminology, and to provide further detail on administrative processes, such as issuing permits.

As mentioned, NOAA received comments supporting inclusion of the St. Lawrence River in the sanctuary's boundary, including from the LONMS Sanctuary Advisory Council. In addition, NOAA received comments from other Federal agencies in the region speculating that sanctuary designation could potentially lead to an increased number of divers and other recreational users in the St. Lawrence Seaway shipping channel, which they believed could present navigational challenges. After evaluating the comments received, NOAA is not including the St. Lawrence River segment within the proposed sanctuary boundary.

## **Summary of Proposed Regulations**

### *A. Adding New Subpart U*

NOAA is proposing to amend 15 CFR part 922 by adding a new subpart (subpart U) that contains site-specific regulations for the proposed sanctuary. This subpart would include the proposed boundary, contain definitions of common terms used in the new subpart, provide a framework for co-management of the sanctuary, identify prohibited activities and exceptions, and establish procedures for certification of existing uses, permitting otherwise prohibited activities, and emergency regulation procedures.

### *B. Proposed Sanctuary Boundary*

As described above, the proposed sanctuary boundary would encompass 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) of eastern Lake Ontario waters. The sanctuary would border Wayne, Cayuga, Oswego, and Jefferson counties. For the Lake Ontario shoreline, NOAA would set the shoreline sanctuary boundary at the Low Water Datum (LWD). The LWD is determined by the U.S. Army Corps of Engineers and is the chart datum to which soundings are referenced for NOAA charts in the Great Lakes. The LWD is also well understood internationally because it is a fixed datum for each lake relative to the International Great Lakes Datum 1985. The state of New York uses the LWD as the line that delineates public land ownership. NOAA would set the northern boundary approximately along the U.S. and Canadian border in both Lake Ontario and the entrance to the St. Lawrence River. The western sanctuary boundary would be set approximately along the western border of Wayne County, and the eastern boundary would be a line from approximately the international border between the United States and Canada near Point Alexandria, ON to the shoreline at the low water datum in Cape Vincent, New York near the entrance to the Saint Lawrence River. The remainder of the eastern sanctuary boundary as well as the southern boundary would follow the shoreline around eastern Lake Ontario. The detailed legal sanctuary boundary description for the proposed

sanctuary is included in section 922.220 and the coordinates are located in appendix A to subpart U of 922.

To ensure compatible use with commercial shipping and other activities, NOAA would exclude the ports and harbors of Oswego, Pultneyville, Little Sodus, Great Sodus, and Port Ontario from the proposed sanctuary boundary. NOAA would include Sackets Harbor in the sanctuary because of the possible presence of underwater cultural and historical resources there. As the proposed eastern boundary of the sanctuary ends at the intersection of Water St. in the Town of Cape Vincent, Cape Vincent marina is not included in the sanctuary. NOAA would exclude Federal navigation channel approaches to harbors, and Federal anchorage areas from the proposed sanctuary to avoid unintended effects on port operations that are critical to the local, regional, and national economies. NOAA would also exclude privately owned bottomlands from the sanctuary.

### *C. Definitions*

NOAA proposes to include a site-specific definition of “sanctuary resource” for LONMS, to include only the historical resources found in this area in accordance with the purpose of this designation. The definition does not include biological and ecological resources of the area. Creating this site-specific definition requires NOAA to modify the national definition of “sanctuary resource” in the national regulations at section 922.3 to add an additional sentence that defines the site-specific definition for the proposed sanctuary at section 922.221. This is similar to the approach taken for other national marine sanctuaries, such as Thunder Bay National Marine Sanctuary, that do not make use of the full national “sanctuary resource” definition. NOAA proposes to define “sanctuary resource” for the proposed sanctuary in Lake Ontario to mean all historical resources as defined at 15 CFR 922.3, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within sanctuary boundaries.

NOAA proposes to further define “shipwreck site” to mean all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed.

NOAA also proposes to define “tethered underwater mobile system” to mean remotely operated vehicles and other systems with onboard propulsion systems that utilize a tether connected to a station-holding (e.g. by anchor, dynamic positioning, or manual vessel operation) surface support vessel.

#### *D. Co-Management of the Sanctuary*

To enhance opportunities and build on existing protections, NOAA and the State of New York would collaboratively manage the sanctuary. NOAA would establish the framework for co-management at section 922.222 and would develop a Memorandum of Agreement (MOA) with the state to establish further details of co-management. NOAA and the State may develop additional agreements as necessary that would provide details on the execution of sanctuary management, such as activities, programs, and permitting programs that can also be updated to adapt to changing conditions or threats to the sanctuary resources. Any proposed changes to sanctuary regulations or boundaries would be jointly coordinated with the state and subject to public review as mandated by the NMSA and other Federal statutes.

Additionally, NOAA recognizes that designation of a national marine sanctuary would lead to subsequent activities that may be subject to review under section 106 of the National Historic Preservation Act. Therefore, NOAA is pursuing execution of a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b). The PA would provide a framework for consideration of future undertakings resulting from management of the sanctuary, if the sanctuary is designated. NOAA is developing this agreement in consultation with the New York State Historic Preservation Officer, the Advisory

Council on Historic Preservation, federally-recognized Nations and Tribes, and other consulting parties.

#### *E. Prohibited and Regulated Activities*

NOAA is proposing to supplement and complement existing management of this area by proposing the following regulations in section 922.223 to protect sanctuary resources.

##### *1. Prohibition on Damaging or Altering Sanctuary Resources*

As a complement to existing protections under state laws and Federal laws, NOAA is proposing to prohibit moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource. This prohibition aims to reduce the risk of direct harm to sanctuary resources. “Moving” and “altering” would include any changes to the position or state of sanctuary resources, as well as covering, uncovering, moving, or taking artifacts, even if the artifacts are not located on or near a shipwreck. This sanctuary prohibition would supplement section 233 of the New York State Education Law which makes it unlawful for any person to “investigate, excavate, remove, injure, appropriate or destroy any object of archaeological, historical, cultural, social, scientific or paleontological interest situated on, in or under lands owned by the state of New York without written permission of the commissioner of education.” NY Educ L § 233.4. This state regulation currently applies in U.S. waters of Lake Ontario and would continue to apply to resources in these waters if the sanctuary is designated.

##### *2. Prohibition on possessing, selling, offering for sale, purchasing, importing, exporting, exchanging, delivering, carrying, transporting, or shipping by any means any sanctuary resource within or outside of the sanctuary*

This prohibition is intended to deter looting of sanctuary resources and to further the policy of in situ preservation of these resources. As noted, the listed activities



would be prohibited both within and outside of the sanctuary. This prohibition is not intended to apply to artifacts or other sanctuary resources collected before the effective date of sanctuary designation.

### *3. Prohibition on grappling into or anchoring on shipwreck sites*

NOAA proposes to prohibit the use of grappling hooks and anchoring devices into or on shipwreck sites, to protect fragile shipwrecks and aircraft within the sanctuary from damage. To help vessels avoid anchoring on known shipwrecks sites, NOAA intends to publish known shipwreck site coordinates on the LONMS website (<https://sanctuaries.noaa.gov/lake-ontario>). However, in accordance with section 304 of the National Historic Preservation Act, NOAA would withhold from public disclosure information about the location, character, or ownership of a historic property if NOAA, in consultation with the Secretary of the Interior, determined that disclosure may risk harm to the historic property. NOAA would also coordinate with the New York State Historic Preservation Officer in making such a determination. Shipwreck sites for which NOAA does not publish coordinates would still be sanctuary resources and the prohibition on anchoring and grappling would still apply. The proposed management plan includes surveying the sanctuary area to identify additional shipwreck sites. As appropriate, and in consideration of resource management conflicts, NOAA intends to update its website as new shipwreck sites are found by the sanctuary or other public or private groups and individuals. As NOAA seeks to promote public access while also ensuring sound resource protection, an initial focus of the sanctuary management plan would be the installation of mooring systems at sanctuary shipwreck sites. The moorings would provide a secure and convenient anchoring point for users, which would eliminate the need for grappling into a wreck. NOAA would also publish guidelines on best practices for anchoring near shipwreck sites to avoid injuring sanctuary resources. Designated Federal anchorage areas would be excluded from the sanctuary.

#### *4. Prohibition on use of tethered underwater mobile systems at shipwreck sites*

Tethered underwater mobile instruments, such as remotely operated vehicles (ROVs), are widely used in underwater survey and site exploration activities, as they enable access to underwater cultural resources at depths beyond recreational and technical diving limits. As tethered instrument use has continued to increase in the scientific, commercial, and recreational user communities, there is a heightened threat of damage to submerged cultural resources by these systems. Tethered systems present three distinct threats to shipwreck sites: intentional site disturbance, unintentional or incidental site disturbance, and site pollution. Intentional disturbance is characterized by the intentional recovery of artifacts from a wreck site, which may include minor alterations or large-scale recovery. Unintentional disturbance occurs when a tethered system makes contact with the wreck or the instrument tether gets entangled on protruding portions of a wreck, such as the mast. Under these circumstances, disentanglement or attempted disentanglement of snagged instruments can inadvertently displace or damage the wreck. The impact from such activities can result in severe damage to artifact assemblages and the structural integrity of a site. This risk is particularly concerning in the proposed sanctuary area, as a large number of wrecks have intact masts and high site integrity. Finally, if the instrument cannot be disentangled, cutting the tether line leads to pollution of the site with abandoned equipment.

Therefore, NOAA proposes to prohibit deploying a tethered underwater mobile system at shipwreck sites. The proposed provision would complement New York State's prohibition on damaging cultural resources by proactively deterring damage, disturbance, and pollution of these nationally significant sites from tethered systems. Because New York State does not proactively manage or protect shipwrecks in Lake Ontario, it also does not regulate the use of tethered systems at shipwreck sites, which, as described above, pose a threat to these resources. New York State's existing prohibition

focuses on permitting for terrestrial resources, rather than underwater cultural resources. As a result, New York State has limited staff expertise regarding maritime archaeology that could inform whether an application for the permitted use of a tethered system is consistent with the preservation of these underwater cultural and historical resources.

The prohibition on operating tethered systems at shipwreck sites would not apply to any activity conducted in accordance with the scope, purpose, terms, and conditions of a permit issued by NOAA, including special use permits pursuant to section 310 of the NMSA. NOAA proposes to allow users to apply for a permit to operate tethered underwater mobile systems at shipwreck sites within the sanctuary. NOAA would review project proposals against the permit criteria outlined in part 922, subpart D and the proposed permit conditions specific to LONMS to ensure that operators would be adequately prepared to access sanctuary resources in a responsible manner

Permits issued by New York State relative to the state prohibition are intended to serve the purposes of the New York State Museum by ensuring the appropriate acquisition of cultural and historical objects for the state museum's archiving purposes. Permits issued by NOAA would serve a distinct, yet complementary, purpose of ensuring the permitted activity is consistent and compatible with the purposes for which the sanctuary is designated. Furthermore, because NOAA's proposed prohibition makes it unlawful for any person to deploy a tethered underwater mobile system at a shipwreck site without a NOAA permit, NOAA could target and investigate the unauthorized use of such systems at shipwreck sites before harm occurs. By contrast, the existing New York prohibition is ambiguous in its application prior to direct injury to cultural resources, and this ambiguity would complicate and potentially compromise similar proactive enforcement measures relying, on this provision of New York state law. For more information about NOAA permits please see section 8 below.

NOAA does not intend for these regulations to apply to autonomous

underwater vehicles or towed systems, such as side-scan sonar, magnetometers, survey trawls, or other survey instruments that are pulled behind a vessel via a tow cable. Towed systems are typically operated high above the lakebed in order to avoid snagging on objects, so they do not present the same level of entanglement threat to shipwrecks as tethered underwater mobile instruments.

#### *5. Prohibition on Interfering with Investigations*

NOAA proposes a regulation to prohibit interfering with sanctuary enforcement activities. This regulation will assist in NOAA's enforcement of the sanctuary regulations and strengthen sanctuary management.

#### *6. Exemption for Emergencies and Law Enforcement*

The proposed prohibitions for the sanctuary would not apply to any activity necessary to respond to emergencies that threaten lives, property, or the environment, or activities that are necessary for law enforcement purposes.

#### *F. Emergency Regulations*

As part of the designation, NOAA would have the authority to issue emergency regulations in LONMS. Emergency regulations are used in limited cases and under specific conditions when there is an imminent risk to sanctuary resources and a temporary prohibition would prevent the destruction or loss of those resources. An emergency regulation would not take effect without the approval of the Governor of New York or her/his designee or designated agency. NOAA would only issue emergency regulations that address an imminent risk for a fixed amount of time with a maximum of 6 months that can be extended one time for no more than 6 months. NOAA must go through a full rulemaking process to consider making an emergency regulation a permanent regulation, which would include a public comment period.

NOAA would add the proposed sanctuary to a list of sanctuaries that have site-specific regulations related to emergency regulations at 922.44, as well as including

detailed site-specific emergency regulations to the regulations at section 922.224.

### *G. Treaty Rights*

The exercise of treaty rights, reserved rights, or similar rights for federally-recognized Tribes and Nations, including the Six Nations of the Haudenosaunee Confederacy, and their citizens is not modified, altered, or in any way affected by the regulations proposed by NOAA in this rulemaking. The Director shall consult with the governing body of each Tribe or Nation protected by the 1794 Treaty of Canandaigua regarding any matter which might affect the ability of their citizens to participate in activities protected by this treaty in the Sanctuary. Please see section III.E “Executive Order 13175” of this document for information about how NOAA has engaged with Tribes and Nations through the sanctuary designation process to date.

### *H. General Permits, Certifications, Authorizations, and Special Use Permits*

#### *1. General Permits*

NOAA would have the authority to issue permits to allow certain activities that would otherwise violate the prohibitions in the proposed sanctuary’s regulations.<sup>2</sup> Similar to other national marine sanctuaries, NOAA is proposing to consider these general permits for the purposes of education, research, or management. In order for an activity to be considered for a general permit, it must also further the goals of the national marine sanctuary and meet regulatory permit review criteria. The Director may subject a general permit to specific terms and conditions as they deem appropriate. For example, a research institution may request to conduct limited archaeological testing at a shipwreck site that involves taking a sample for the purpose of dating the site. This activity would violate the prohibition on damaging or altering a sanctuary resource and would therefore

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<sup>2</sup> A NOAA permit does not relieve an applicant or permittee of responsibility to comply with all other federal, state and local laws and regulations, and the permit is not valid until all other necessary permits, authorizations, and approvals are obtained. As co-managers, NOAA would coordinate the issuance of permits with New York State.

require the issuance of a general permit to allow the activity for the purposes of education, research, or management. NOAA would evaluate the request and would consider the inclusion of permit terms and conditions to ensure the activities are conducted by qualified professionals and to proper archaeological standards, as well as to further ensure that the activity is meeting the appropriate purpose of education, research, or management of the resource.

To address the above additions to the NOAA general permit authority for the proposed sanctuary in Lake Ontario, NOAA would amend the regulatory text in the program-wide regulations in part 922, subpart D, to add references to subpart U, as appropriate.

## *2. Certifications*

Pre-existing activities conducted pursuant to a valid lease, permit, license, or right of subsistence use or of access might be occurring within the LONMS area on the date of sanctuary designation that would otherwise be prohibited by sanctuary regulations. Therefore, NOAA would add a new section, 922.226, to the LONMS regulations that would describe the process by which it would be able to certify a valid lease, permit, license, or right of subsistence use or of access within the proposed sanctuary boundaries. In compliance with the NMSA, the regulations at section 922.226 would state that certification is the process by which permitted activities existing prior to the designation of the sanctuary that violate sanctuary prohibitions may be allowed to continue. NOAA may, however, further regulate the exercise of those permitted activities consistent with the goals of the sanctuary through applying additional terms and conditions of the certification. Requests for certifying permitted existing uses would have to be received by NOAA within 90 days of the effective date of the designation.

## *3. Authorizations*

NoAA would have the authority to consider allowing an activity

otherwise prohibited by section 922.223 if such activity is specifically authorized by any valid Federal, state, or local lease, permit, license, approval, or other authorization issued after the effective date of sanctuary designation. NOAA would also have the authority to add terms and conditions to authorizations to ensure that activities conducted within the sanctuary are carried out in a manner that is consistent with the purposes for which the Sanctuary was designated. As such, NOAA proposes to amend the regulatory text at section 922.36 to add reference to subpart U.

#### *4. Special Use Permits*

NOAA has the authority under the NMSA to issue special use permits (SUPs) at national marine sanctuaries, as established by section 310 of the NMSA. SUPs can be used to authorize specific activities in a sanctuary if such authorization is necessary to establish conditions of access to, and use of, any sanctuary resource or to promote public use and understanding of a sanctuary resource. The NMSA requires SUPs to contain four specific conditions (16 U.S.C. 1441(c)): (1) activities must be compatible with the purposes for which the sanctuary is designated and with protection of sanctuary resources; (2) activities carried out under the permit must be conducted in a manner that does not destroy, cause the loss of, or injure sanctuary resources; (3) permittees are required to purchase and maintain comprehensive general liability insurance, or post an equivalent bond, against claims arising out of activities conducted under the permit and to agree to hold the United States harmless against such claims; and (4) SUPs shall not authorize the conduct of any activity for a period of more than 5 years unless renewed by the Secretary. As is the case with general permits, NOAA can place additional conditions on SUPs specific to the activity being permitted. The activities that qualify for a SUP are set forth in the Federal Register (78 FR 25957 (May 3, 2013); 82 FR 42298 (Sept. 7, 2017)). Categories of SUPs may be changed or added to through public notice and comment.

NOAA proposes to create a new SUP category for “the operation of tethered underwater mobile systems at shipwreck sites in Lake Ontario National Marine Sanctuary” to apply when the proposed activity does not qualify for a general permit or authorization, as described above.<sup>3</sup> NOAA determined that after appropriate environmental review and application of terms and conditions, operating tethered underwater mobile systems at shipwreck sites can occur without injuring sanctuary resources. NOAA will coordinate with the New York State Historic Preservation Officer to consider terms and conditions that prevent harm to sanctuary resources. Such terms and conditions will generally address potential impacts such as tether management and entanglement mitigation, as well as avoidance of site pollution. While the NMSA allows NOAA to assess and collect fees for the conduct of any activity under an SUP, it also allows NOAA to waive or reduce fees for activities that do not derive profit from the access or use of sanctuary resources. NOAA proposes to waive the associated fee for issuing an SUP for operating tethered underwater mobile systems at shipwreck sites within LONMS when non-commercial operators do not derive profits from their use of the sanctuary or when the operators further the sanctuary’s objectives (e.g. educating the public about the sanctuary or contributing to the sanctuary’s research goals).

#### *I. Other Conforming Amendments*

The general regulations in part 922, subpart A, for general information and part 922, subpart E, for regulations of general applicability would also have to be amended so that the regulations are accurate and up-to-date. The modified sections to conform to adding a new sanctuary are:

- Section 922.1 Purposes and applicability of the regulations

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<sup>3</sup> A NOAA permit does not relieve an applicant or permittee of responsibility to comply with all other federal, state and local laws and regulations, and the permit is not valid until all other necessary permits, authorizations, and approvals are obtained. As co-managers, NOAA would coordinate the issuance of permits with New York State.



- Section 922.4 Boundaries
- Section 922.5 Allowed activities
- Section 922.6 Prohibited or otherwise regulated activities
- Section 922.7 Emergency regulations
- Section 922.11 Definitions
- Section 922.30 National Marine Sanctuary general permits
- Section 922.36 National Marine Sanctuary authorizations

#### *J. Terms of Designation*

Section 304(a)(4) of the National Marine Sanctuaries Act (NMSA) requires that the terms of designation include the geographic area included within the sanctuary; the characteristics of the area that give it conservation, recreational, ecological, historical, research, educational, or aesthetic value; and the types of activities that will be subject to regulation by the Secretary of Commerce to protect these characteristics. Section 304(a)(4) also specifies that the terms of designation may be modified only by the same procedures by which the original designation was made. Thus, the terms of designation serve as a constitution for the Sanctuary.

NOAA is proposing to establish terms of designation that describe the geographic area, resources, and activities as described in details above. NOAA would add the terms of designation language as appendix B to the regulations at 15 CFR part 922, subpart U.

## **II. Request for Comments**

NOAA requests general comments on this proposed rule and in particular, comments on the proposed Special Use Permit category for operating tethered underwater mobile systems at shipwreck sites; the proposed terms of designation; the cost estimates in the Regulatory Flexibility Analysis (section III.F “Regulatory Flexibility Act”); and potential names for the sanctuary.

A comprehensive summary of all public comments on the DEIS and proposed rule, along with responses to comments, will be included in the final environmental impact statement (FEIS). NOAA will publish the FEIS following public review and comment on this proposed rule.

### **III. Classification**

#### *A. National Marine Sanctuaries Act*

NOAA has determined that the designation of the Lake Ontario National Marine Sanctuary will not have a negative impact on the national marine sanctuary system and that sufficient resources exist to effectively implement sanctuary management plans and to update site characterizations. The finding for NMSA section 304(f) is published on the ONMS website for the Lake Ontario designation at <https://sanctuaries.noaa.gov/lake-ontario>.

#### *B. National Environmental Policy Act*

As described in section I of this rulemaking, NOAA prepared a DEIS to evaluate the impacts of this proposed action, which considered three alternatives for the proposed designation of a national marine sanctuary in eastern Lake Ontario and the Thousand Islands region of the St. Lawrence River. NOAA is now issuing proposed regulations for the sanctuary as the next phase of this designation process. This proposed rule includes some modifications to components of the proposed action presented in the DEIS (see section I.C.3. “Development of Proposed Regulations and Terms of Designation” of this document for further detail). NOAA evaluated the sufficiency of the DEIS for this proposed rule using the Council on Environmental Quality regulations criteria for supplementation, as well as guidance in the NOAA NEPA Companion Manual. NOAA has determined that a supplemental NEPA analysis is not required at this time for the reasons outlined below.

In evaluating the first criteria for preparing a supplemental EIS, NOAA

finds that the changes to the proposed action reflected in this proposed rule are not substantial changes relevant to environmental concerns. NOAA expects that the technical changes made to clarify terminology and the addition of regulations outlining the administrative procedures for sanctuary management would not change the intent or requirements of the proposed regulatory concepts in the DEIS. With respect to sanctuary boundaries, NOAA is proposing the same sanctuary boundary as described in Alternative 2 in the DEIS with one technical change of including, rather than excluding, dredge disposal areas from the sanctuary. Any impacts of these minor changes and this proposed sanctuary boundary would be within the range of potential effects described in the DEIS.

In evaluating the second criteria for preparing a supplemental EIS, NOAA finds new information available since publication of the DEIS, such as comments related to diver safety, commercial shipping interactions, and climate or wetland impacts, does not reflect significant new circumstances or information that is relevant to environmental concerns. In addition, NOAA does not expect that this new information would result in any change in the type or significance of potential impacts of the proposed action from those analyzed in the DEIS.

NEPA regulations and NOAA guidance recommend that agencies consider whether the purposes of NEPA would be furthered by preparing a supplemental NEPA analysis, and if the public has sufficient opportunity to meaningfully consider the action based on the alternatives that were presented in the DEIS. In this designation process, NOAA separated the DEIS and rulemaking processes to allow increased opportunity for public and agency input to inform the development of the proposed rule. Based on the extensive opportunities for input during this designation process and the minimal changes in the proposed action and its potential impacts, NOAA does not believe that the purposes of NEPA would be furthered by the preparation of a supplemental EIS at this time.

After reviewing this proposed rulemaking, comments received on the DEIS, and changes made to certain components of the proposed action, NOAA determined that supplemental analysis is not required for this proposed rule because the DEIS presented the public with a comprehensive analysis of the spectrum of environmental impacts among several alternative scenarios from which this proposed rule was developed. Any changes reflected in the proposed action are insubstantial in that they do not differ from the impacts already analyzed in the DEIS and will not have any synergistic or cumulative impacts not already analyzed in the DEIS. If the proposed action is further revised in response to comments on the proposed rule, NOAA would reexamine the sufficiency of the existing NEPA documents and the need for any supplemental analysis.

*C. Executive Order 12866: Regulatory Impact*

OMB has determined this rule is significant as that term is defined under Executive Order 12866. NOAA anticipates the associated costs with this proposed rule will be *de minimis*, as explained more fully in the Regulatory Flexibility Analysis in section F “Regulatory Flexibility Act” below.

*D. Executive Order 13132: Federalism Assessment*

NOAA has concluded that this regulatory action does not have federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132 because NOAA supplements and complements state and local laws under the NMSA rather than supersedes or conflicts with them.

*E. EO 13175 Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13175 of November 6, 2000, Federal departments and agencies are charged with engaging in regular and meaningful consultation and collaboration with officials of federally-recognized Nations and Tribes on the development of Federal policies that have implications for Indigenous peoples and are

responsible for strengthening the government-to-government relationship between the United States and Indian Nations and Tribes. NOAA has concluded that this regulatory action does have Tribal implications under Executive Order 13175.

NOAA invited the following federally recognized Nations and Tribes to engage in government-to-government consultation on the proposed sanctuary designation: Cayuga Nation, Oneida Nation, Onondaga Nation, Seneca Nation, Saint Regis Mohawk Tribe, Tonawanda Seneca Nation, and Tuscarora Nation. NOAA sent initial letters inviting the seven Nations and Tribes to participate in government-to-government consultation prior to publication of the Notice of Intent (December 14, 2018). NOAA later sent notice of the draft Environmental Impact Statement publication to the same Nations and Tribes (July 8, 2021). The Onondaga Nation elected to engage in government-to-consultation with NOAA, and the initial government-to-government consultation meeting with the Onondaga Nation was held on July 30, 2020. To date, the Seneca Nation has chosen to informally engage with NOAA throughout the designation process instead of participating in formal government-to-government consultation. The seven federally recognized Nations and Tribes have the opportunity at any point to participate in the designation process, including a request to initiate formal government-to-government consultation with NOAA. NOAA has also invited the seven federally recognized Nations and Tribes to participate in the development of a Programmatic Agreement to fulfill NOAA's obligations under section 106 of the National Historic Preservation Act. NOAA will continue to engage, and as appropriate consult, with Nations and Tribes throughout the sanctuary designation process.

Upon designation, NOAA will offer consultation to federally recognized Nations and Tribes on sanctuary action that may have Tribal implications as described in E.O. 13175, including those actions that might affect the ability of Nation or Tribal citizens to participate in activities protected by the 1794 Treaty of Canandaigua.

#### *F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA), as amended and codified at 5 U.S.C. 601 et seq., requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This analysis evaluates the potential effects of the proposed rulemaking on small businesses. There are three primary industries considered in this section as small businesses: commercial fishing, recreational for-hire fishing, and dive/snorkeling for-hire operations. Small entities are defined by the Small Business Administration (SBA). The definitions of relevant small businesses presented here are sourced from the most recent size standards published by the SBA in 2019. Size standards are based upon the average annual receipts (all revenue) or the average employment of a firm. The commercial size standards are \$22.0 million for finfish fishing (NAICS code—114111), \$6.0 million for shellfish fishing (NAICS code—114112), and \$8.0 million for other marine fishing (NAICS code—114119). For-hire recreational fishing operations and dive/snorkeling for-hire operations (NAICS code—713990) have size standards of \$8.0 million.<sup>4</sup> According to these limits, each of the businesses potentially affected by this proposed rule would most likely be small businesses. However, as further discussed below, these regulations

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<sup>4</sup> US Small Business Administration. (2019). Table of Size Standards. available at: <https://www.sba.gov/document/support--table-size-standards>

will not have a significant economic impact on the affected small entities, and the Chief Counsel for Regulation for the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have significant economic impacts on a substantial number of small entities. Thus, NOAA is not required to prepare and has not prepared an initial regulatory flexibility analysis. The following analysis supports NOAA's decision to certify that there will not be a significant economic impact on a substantial number of entities.

### *1. Commercial Fishing*

#### *i. Description and Estimate of the Number of Small Entities to Which the Proposed Action Would Apply*

The data presented here are from the New York Department of Environmental Conservation (NYSDEC). Commercial fishing activity in the New York waters off Lake Ontario is limited to the embayments and nearshore open waters of the eastern basin. In 2018 and 2019, gillnets were the only gears actively employed. Since 2014, there were only two active commercial fishers in eastern Lake Ontario. The proposed rule does not directly limit the number of fishermen or catch. From 2004 through 2013, there were three active fishers (with the exception of 2010, which had two active fishers). From 2015 to 2019, the average number of pounds of fish landed was 54,971, with yellow perch comprising 97.9% of total average annual landings in the New York waters of Eastern Lake Ontario. In 2018, the value of yellow perch landings (38,987 pounds) was \$71,134, and in 2019 the value of the yellow perch landings (54,533 pounds) was \$132,143 in the New York waters of Eastern Lake Ontario.<sup>5</sup> Although data

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<sup>5</sup> New York Department of Environmental Conservation. (2019). 2018 annual report: Bureau of Fisheries Lake Ontario Unit and St. Lawrence River Unit to the Great Lakes Fishery Commission's Lake Ontario Committee. Available at: [https://www.dec.ny.gov/docs/fish\\_marine\\_pdf/lourpt18.pdf](https://www.dec.ny.gov/docs/fish_marine_pdf/lourpt18.pdf); New York Department of Environmental Conservation. (2020). 2019 Annual report: Bureau of Fisheries Lake Ontario Unit and St. Lawrence River Unit to the Great Lakes Fishery Commission's Lake Ontario Committee. Available at: [https://www.dec.ny.gov/docs/fish\\_marine\\_pdf/2019lakeontannualrep.pdf](https://www.dec.ny.gov/docs/fish_marine_pdf/2019lakeontannualrep.pdf).

is not available on the fishers' total catch (outside of eastern Lake Ontario), it is assumed that both of these fishers are small businesses.

*ii. Description of the Projected Reporting, Record-Keeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Records*

The proposed regulatory action would not establish any new reporting or record-keeping requirements.

*iii. Identification of all Relevant Federal Rules, which may Duplicate, Overlap or Conflict with the Proposed Rule*

No duplicative, overlapping, or conflicting Federal rules have been identified.

*iv. Significance of Economic Effects on Small Entities*  
*Substantial Number Criterion*

The proposed regulations do not regulate fishing but do prohibit damage to sanctuary resources. A similar provision prohibiting injury to cultural resources is already in existing state law, and therefore, the proposed regulations are not expected to have an effect on businesses.

In 2018 and 2019, there were two active fishing licenses within eastern Lake Ontario. Although it is assumed that both fishers are small businesses, it is also assumed that the fishers actively avoid using their gillnets on or close to shipwrecks to avoid entangling or damaging their gear and to comply with existing state law. Therefore, the proposed rule will not affect a substantial number of small businesses.

*Significant Economic Impacts*

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The outcome of “significant economic impact” can be ascertained by examining profitability. Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

As mentioned above, it is assumed that fishers in the sanctuary are complying with the existing state law and that they actively avoid known shipwrecks when using gear that could become entangled or damaged by shipwrecks. Therefore, a significant reduction in profits for a substantial number of small entities is not expected to result from the proposed regulatory action.

*v. Description of Significant Alternatives to the Proposed Action and Discussion of how the Alternatives Attempt to Minimize Economic Impacts on Small Entities*

This proposed regulatory action, if implemented, is not expected to significantly reduce profits for a substantial number of small entities directly regulated by this action. As a result, the issue of significant alternatives is not relevant.

*2. Recreational For-Hire Fishing*

*i. Description and Estimate of the Number of Small Entities to which the Proposed Action Would Apply*

For hire-recreational fishing includes both charter and party boats. Charter boats, generally, are fishing vessels that are hired by a single person to take up to six anglers on a fishing trip. The charge is on a per-trip basis. Party or head boats usually operate on a schedule and may provide several trips in a single day, taking many different fishing parties at a time. The charge is on a per-person basis. Head boats are usually larger and able to accommodate more anglers than a party boat.

Sixty charters operate in Lake Ontario.<sup>6</sup> Nine charters are

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<sup>6</sup> Fishing Booker. (2021). Lake Ontario. available at: [https://fishingbooker.com/charters/search/us/lake-ontario?&booking\\_days=1&booking\\_persons=](https://fishingbooker.com/charters/search/us/lake-ontario?&booking_days=1&booking_persons=)

identified as fishing inshore, twenty-one as fishing nearshore, twelve as river fishing, and forty-four as lake fishing. (The numbers sum to more than sixty since charters may service multiple areas). NOAA does not have data on how many of these charters visit the proposed sanctuary waters. In the absence of cost and earnings data and based upon communications with SAC members, all of the for-hire fishing businesses are believed to be small entities. Therefore, it is assumed that this proposed rule would affect a substantial number of small entities.

*ii. Description of the Projected Reporting, Record-Keeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Records*

The proposed regulatory action would not establish any new reporting or record-keeping requirements.

*iii. Identification of all Relevant Federal Rules, which may Duplicate, Overlap or Conflict with the Proposed Rule*

No duplicative, overlapping, or conflicting Federal rules have been identified.

*iv. Significance of Economic Effects on Small Entities*  
*Substantial Number Criterion*

The proposed regulations do not regulate fishing but do prohibit the damage of sanctuary resources. A similar provision prohibiting injury to cultural resources is already in existing state law, and therefore, the proposed regulations are not expected to have an effect on businesses.

To further reduce the likelihood of damage to sanctuary resources, NOAA

is proposing to prohibit grappling or anchoring on shipwreck sites. As an initial focus of the sanctuary management plan, NOAA is proposing to implement a mooring program that would provide continued access to these shipwrecks to recreational operations and would reduce the likelihood of damage to the sites. It is not expected that the level of access and use of these shipwrecks would be altered by the regulations. Consequently, the proposed rule will not affect a substantial number of small businesses.

#### *Significant Economic Impacts*

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

It is assumed that for-hire operations in the sanctuary are already in compliance with the existing state law and that the level of access and use of these shipwrecks would not be altered by the regulations. The mooring program may actually increase access by providing safe and secure locations to enjoy sanctuary resources. As a result, a significant reduction in profits for a substantial number of small entities is not expected as a result of the proposed regulatory action.

#### *v. Description of Significant Alternatives to the Proposed Action and Discussion of how the Alternatives Attempt to Minimize Economic Impacts on Small Entities*

This proposed regulatory action, if implemented, is not expected to reduce the profits of any small businesses directly regulated by this action. As a result, the issue of significant alternatives is not relevant.

#### *3. Non-consumptive Recreation Industry*

This section considers the number of small businesses operating within the non-consumptive recreation industry and the potential effects on those businesses. Small businesses considered within this industry include dive and snorkeling for-hire operations, rental equipment operations, wildlife viewing operations, and other businesses that either utilize or whose customers utilize sanctuary resources.

*i. Description and Estimate of the Number of Small Entities to which the Proposed Action Would Apply*

Eighteen dive shops are located within feasible traveling distance to eastern Lake Ontario.<sup>7</sup> All of these non-consumptive businesses are believed to be small entities.

*ii. Description of the Projected Reporting, Record-Keeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities which will be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Records*

The proposed regulatory action would not establish any new reporting or record-keeping requirements.

*iii. Identification of all Relevant Federal Rules, which may Duplicate, Overlap or Conflict with the Proposed Rule*

No duplicative, overlapping, or conflicting Federal rules have been identified.

*iv. Significance of Economic Effects on Small Entities*  
*Substantial Number Criterion*

Since all these non-consumptive businesses are believed to be small entities, it is assumed that this proposed rule would affect a substantial number of small entities.

*Significant Economic Impacts*

Profitability: Do the regulations significantly reduce profits for a substantial number of small entities?

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<sup>7</sup> Shea, R., Schwarzmnn, D. (2021). Proposed Lake Ontario National Marine Sanctuary study area profile. National Marine Sanctuaries Conservation Series ONMS-21-04. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of National Marine Sanctuaries, Silver Spring, MD. Available at: <https://sanctuaries.noaa.gov/lake-ontario/>

Estimates of revenues, costs, and profitability of scuba diving and snorkeling for-hire businesses are not available. The proposed regulations are designed to conserve and sustain resources to ensure protection and conservation of shipwrecks without restricting access to the sites. As part of the proposed action, NOAA would set up a mooring program in the sanctuary to provide moorings at popular wreck sites for the public to use to secure their vessels when accessing the wrecks. Moorings eliminate the need for anchoring directly into a shipwreck site, which decreases the likelihood of damage from grappling or anchoring; provide secure and convenient anchoring points for scuba diving and snorkeling for-hire businesses; and facilitate public access and safer diving by providing a sturdy means of descent and ascent for divers. NOAA plans to engage the Sanctuary Advisory Councils and dive charters to determine how many buoys are needed and where to install them. Therefore, this proposed action will support small businesses by providing continued access to these dive and snorkeling sites. Given the information above, a significant reduction in profits for a substantial number of small entities is not expected to result from the proposed regulatory action.

*v. Description of Significant Alternatives to the Proposed Action and Discussion of how the Alternatives Attempt to Minimize Economic Impacts on Small Entities*

This proposed regulatory action, if implemented, is not expected to reduce the profits of any small businesses directly regulated by this proposed rule. As a result, the issue of significant alternatives is not relevant.

*G. Paperwork Reduction Act*

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

NOAA has a valid Office of Management and Budget (OMB) control number (0648–0141) for the collection of public information related to the processing of permits across the National Marine Sanctuary System. NOAA’s proposal to create a national marine sanctuary in Lake Ontario would likely result in a minimal increase in the number of requests for general permits, special use permits, certifications, and authorizations because this action proposes to add those approval types for this proposed sanctuary. A large increase in the number of permit requests would require a change to the reporting burden certified for OMB control number 0648–0141. While not expected, if such permit requests do increase, a revision to this control number for the processing of permits would be requested.

In the most recent Information Collection Request revision and approval for national marine sanctuary permits (dated November 30, 2021), NOAA reported approximately 424 national marine sanctuary permitting actions each year, including applications for all types of permits, requests for permit amendments, and the conduct of administrative appeals. Of this amount, LONMS is expected to add 4 to 5 permit requests per year. The public reporting burden for national marine sanctuaries general permits is estimated to average three responses with an average of 1.5 hours per response, to include application submission, a cruise or flight log (or some other form of activity report), and a final summary report after the activity is complete.

Please send any comments regarding the burden estimate for this data collection requirement or any other aspect of this data collection, including suggestions for reducing the burden, to NOAA (see ADDRESSES above) and to OMB by email to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or fax to (202) 395-7285. Before an agency submits a collection of information to OMB for approval, the agency shall provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information, to solicit comments to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### *H. National Historic Preservation Act*

Section 106 of the National Historic Preservation Act (NHPA, 54 USC 306108) requires Federal agencies to consider the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) an opportunity to comment. "Historic property" means any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and material remains that are related to and located within such properties, including properties of traditional religious and cultural importance to an Indigenous nation or Tribe or Native Hawaiian organization. The regulations implementing section 106 of the NHPA (36 CFR 800) guide Federal agencies in meeting this responsibility through a process to identify historic properties potentially affected by the undertaking, assess its effects, and seek ways to avoid, minimize, or mitigate any adverse effects on historic properties, all of which occur in consultation with interested parties.

NOAA has determined that although designation of a national marine sanctuary and related rulemaking for sanctuary-specific regulations meet the definition of an undertaking as defined at 800.16(y), these activities are not of the type that have the potential to cause effects on historic properties, and therefore NOAA has no further obligations under section 106, per 800.3(a)(1). NOAA, however, recognizes that designation of a national marine sanctuary will lead to subsequent activities that may constitute undertakings subject to section 106 review under the NHPA and therefore NOAA is pursuing execution of a Programmatic Agreement (PA) pursuant to 36 CFR 800.14(b). The PA will provide a framework and process for consideration of future undertakings resulting from management of the sanctuary, associated field operations, and other activities, if the sanctuary were designated. NOAA will develop this agreement in consultation with the New York State Historic Preservation Officer (SHPO), the ACHP, and other consulting parties.

#### *I. Sunken Military Craft Act*

The Sunken Military Craft Act of 2004 (SMCA; Pub. L. 108-375, Title XIV, sections 1401 to 1408; 10 U.S.C. 113 note) preserves and protects from unauthorized disturbance all sunken military craft that are owned by the United States government, as well as foreign sunken military craft that lie within United States waters, as defined in the SMCA, and other vessels owned or operated by a government on military noncommercial service when it sank. Thousands of U.S. sunken military craft lie in waters around the world, many accessible to looters, treasure hunters, and others who may cause damage to them. These craft, and their associated contents, represent a collection of non-renewable and significant historical resources that often serve as war graves, carry unexploded ordnance, and contain oil and other hazardous materials. By protecting sunken military craft, the SMCA helps reduce the potential for irreversible harm to these nationally important historical and cultural resources.



The proposed Lake Ontario National Marine Sanctuary may include sunken military craft that have yet to be discovered, such as U.S. military training aircraft believed to have been lost in the area. Sunken military craft fall under the jurisdiction of a number of Federal agencies such as the U.S. Navy and the U.S. Coast Guard. NOAA would coordinate with the U.S. Navy and any other applicable Federal agency regarding activities directed at sunken military craft discovered within the sanctuary.

*J. Coastal Zone Management Act (CZMA)*

Section 307 of the Coastal Zone Management Act (CZMA; 16 U.S.C. 1456) requires Federal agencies to consult with a state's coastal program on potential federal regulations having an effect on state waters. Because the proposed sanctuary in Lake Ontario would lie in New York State waters, NOAA intends to submit a copy of this proposed rule and supporting documents to the State of New York's Coastal Management Program for evaluation of Federal consistency under the CZMA. NOAA will publish the final rule and designation only after completion of the Federal consistency process under the CZMA.

*K. Executive Order 12898: Environmental Justice*

Executive Order 12898 directs that the programs of Federal agencies identify and avoid disproportionately high and adverse effects on human health and the environment of minority or low-income populations. The designation of national marine sanctuaries by NOAA helps to ensure the enhancement of environmental quality for all populations in the United States. The alternatives described in this document would not result in disproportionate negative impacts on any minority or low-income population. In addition, many of the potential impacts from designating the proposed sanctuary would result in long-term or permanent beneficial impacts by protecting underwater cultural resources, which may have a positive impact on communities by providing employment and educational opportunities, and potentially result in improved ecosystem services.

## **List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Cultural resources, Historic preservation, Marine protected areas, Marine resources, National marine sanctuaries, Recreation and recreation areas, Reporting and recordkeeping requirements, Shipwrecks.

**Nicole R. LeBoeuf,**

*Assistant Administrator*

*for Ocean Services and Coastal Zone Management,*

*National Ocean Service,*

*National Oceanic and Atmospheric Administration.*

For the reasons set forth above, NOAA is amending part 922, title 15 of the Code of Federal Regulations as follows:

### **Part 922 – NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS**

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 et seq.

2. Amend § 922.1 by revising paragraph (a)(2) to read as follows:

#### **§ 922.1 Purposes and applicability of the regulations**

(a)\* \* \*

(2) To implement the designations of the national marine sanctuaries, for which site specific regulations appear in subparts F through U, by regulating activities affecting them, consistent with their respective terms of designation, in order to protect, restore, preserve, manage, and thereby ensure the health, integrity and

continued availability of the conservation, recreational, ecological, historical, scientific, educational, cultural, archaeological and aesthetic resources and qualities of these areas.

\* \* \* \* \*

3. Amend § 922.4 by revising the section to read as follows:

**§ 922.4 Boundaries**

The boundaries for each of the sixteen National Marine Sanctuaries covered by this part are described in subparts F through U, respectively.

4. Amend § 922.5 by revising the paragraph to read as follows:

**§ 922.5 Allowed activities**

All activities (*e.g.*, fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in Subparts F through U, subject to any emergency regulations promulgated pursuant to §§ 922.7, 922.112(b), 922.165, 922.185, 922.196, 922.204, 922.214, or 922.224 subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, Tribal, or local authority of competent jurisdiction, including, but not limited to, Federal, Tribal, and State fishery management authorities, and subject to the provisions of section 312 of the NMSA. The Director may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.

5. Amend § 922.6 by revising the sentence to read as follows:

**§ 922.6 Prohibited or otherwise regulated activities**

Subparts F through U set forth site-specific regulations applicable to the activities specified therein.

6. In § 922.7 add paragraph (b)(7) to read as follows:

**§ 922.7 Emergency regulations**

\* \* \*

(b) \* \* \*

(7) Lake Ontario National Marine Sanctuary, § 922.224.

7. Amend §922.11 by revising the definition of “sanctuary resource” to read as follows:

**§ 922.11 Definitions.**

\* \* \* \* \*

*Sanctuary resource* means any living or non-living resource of a national marine sanctuary, or the parts or products thereof, that contributes to the conservation, recreational, ecological, historical, educational, cultural, archaeological, scientific, or aesthetic value of the national marine sanctuary, including, but not limited to, waters of the sanctuary, the seabed or submerged lands of the sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, birds, sea turtles and other marine reptiles, marine mammals, and maritime heritage, cultural, archaeological, and historical resources. For Thunder Bay National Marine Sanctuary and Underwater Preserve, Sanctuary resource is defined at § 922.191. For Hawaiian Islands Humpback Whale, Sanctuary resource is defined at § 922.182. For Malloes Bay-Potomac River National Marine Sanctuary, Sanctuary resource is defined at § 922.201(a). For Wisconsin Shipwreck Coast National Marine Sanctuary, sanctuary resource is defined at § 922.211. For Lake Ontario National Marine Sanctuary, sanctuary resource is defined at § 922.221.

\* \* \* \* \*

8. Amend § 922.30 by revising paragraph (a)(2) to read as follows:

**§ 922.30 National Marine Sanctuary general permits.**

(a) \* \* \*

(2) The permit procedures and criteria for all national marine sanctuaries in which the proposed activity is to take place in accordance with relevant site-specific regulations appearing in subparts F through U.

\* \* \* \* \*

9. Amend 922.36 by revising paragraphs (a) and (b)(1)(ii) to read as follows:

**§ 922.36 National Marine Sanctuary authorizations.**

(a) Authority to issue authorizations. The Director may authorize a person to conduct an activity otherwise prohibited by subparts L through P or subparts R through U of this part, if such activity is specifically allowed by any valid Federal, State, or local lease, permit, license, approval, or other authorization (hereafter called “agency approval”) issued after the effective date of sanctuary designation or expansion, provided the applicant complies with the provisions of this section. Such an authorization by ONMS is hereafter referred to as an “ONMS authorization.”

(b) \* \* \*

(ii) Notification must be sent to the Director, Office of National Marine Sanctuaries, to the attention of the relevant Sanctuary Superintendent(s) at the address specified in subparts L through P, or subpart R through U, as appropriate.

\* \* \* \* \*

10. Add subpart U to read as follows:

**SUBPART U- Lake Ontario National Marine Sanctuary**

Sec.

922.220 Boundary.

922.221 Definitions.

922.222 Co-management.

922.223 Prohibited or otherwise regulated activities.

922.224 Emergency regulations.

922.225 Permit procedures and review criteria.

922.226 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

922.227 Effect on affected federally-recognized Indian Tribes.

Appendix A to Subpart U of Part 922— Lake Ontario National Marine Sanctuary  
Boundary Description and Coordinates of the Excluded Areas

Appendix B to Subpart U of Part 922— Lake Ontario National Marine Sanctuary Terms  
of Designation

**§ 922.220 Boundary.**

Lake Ontario National Marine Sanctuary consists of an area of approximately 1,302 square nautical miles (1,724 square miles) of Lake Ontario waters within the State of New York and the submerged lands thereunder; over, around, and under the submerged underwater cultural resources in Lake Ontario. The precise boundary coordinates are listed in Appendix A to this subpart. The western boundary of the sanctuary begins at approximately the border between Wayne County and Monroe County where the shoreline (defined here and throughout the remainder of this boundary description as the low water datum) intersects the line segment formed between Point 1 and Point 2. From this intersection, the boundary continues north into Lake Ontario to Point 2 and then to each successive point in numerical order to Point 7. The sanctuary boundary continues east from Point 7 to each successive point in numerical order to Point 10. The boundary continues roughly to the northeast from Point 10 to Point 11 and then to Point 12, just east of Alexandria, ON, Canada.

From Point 12, the boundary continues roughly southeast towards Point 13 until it intersects the shoreline at the low water datum near the lakeward end of Market Street in Cape Vincent, New York. The boundary follows the shoreline from this intersection

roughly to the southwest around Tibbetts Point and then continues roughly to the southeast around Wilson Point and Dablon Point until it intersects the line segment formed between Point 14 and Point 15 at the Rt. 6 bridge at the upper end of Mud Bay. From this intersection, the boundary continues towards Point 15 until it intersects the shoreline at approximately the mouth of Kents Creek. The boundary follows the shoreline from this intersection to the southwest around Baird Point continuing roughly southeast cutting off the mouths of creeks and streams around Point Peninsula and along western Chaumont Bay until it intersects the line segment formed between Point 16 and Point 17. From this intersection, the boundary continues across the Chaumont River towards Point 17 until it intersects the shoreline near the eastern side of the West Main Street bridge. From this intersection, the boundary follows the shoreline around eastern Chaumont Bay, Point Salubrious, and Guffin Bay and then around Pillar Point and Everleigh Point and up the western side of Black River Bay, until it intersects the line segment formed between Point 18 and Point 19 at approximately the mouth of Black River. The boundary continues from this intersection across the Black River towards Point 19 until it intersects the shoreline.

From this intersection, the boundary follows the shoreline roughly southwest along the eastern side of Black River Bay and Henderson Bay continuing around Stony Point and then roughly south cutting off the mouths of rivers, streams, creeks, and ponds as it continues around Mexico Bay until it intersects the line segment formed between Point 20 and Point 21 just east of Oswego Harbor. From this intersection, the boundary continues towards Point 21 until it intersects the shoreline at the eastern breakwater of Oswego Harbor. From this intersection, the boundary follows the lakeward shoreline northwest until it intersects the line segment formed between Point 22 and Point 23. From this intersection, the boundary continues across the mouth of Oswego Harbor towards Point 22 until it intersects the shoreline at the end of the western breakwater of Oswego

Harbor. From this intersection, the boundary follows the lakeward shoreline roughly to the southwest cutting off the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 24 and Point 25 at the end of the eastern breakwater of Little Sodus Bay. From this intersection, the boundary continues across the mouth of Little Sodus Bay towards Point 25 until it intersects the shoreline at the end of the western breakwater of Little Sodus Bay. From this intersection, the boundary follows the lakeward shoreline roughly west until it intersects the line segment formed between Point 26 and Point 27 at the mouth of Blind Sodus Bay. From this intersection, the boundary continues across the mouth of Blind Sodus Bay towards Point 27 until it intersects the shoreline. From this intersection, the boundary follows the shoreline roughly southwest cutting across the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 28 and Point 29 at the mouth of Port Bay. From this intersection, the boundary continues across the mouth of Port Bay towards Point 29 until it intersects the shoreline. From this intersection, the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 30 and Point 31 at the mouth of East Bay. From this intersection, the boundary continues across the mouth of East Bay towards Point 31 until it intersects the shoreline.

From this intersection, the boundary follows the shoreline roughly west until it intersects the line segment formed between Point 32 and Point 33 at the eastern breakwater of Sodus Bay. From this intersection, the boundary continues across the mouth of Sodus Bay towards Point 33 until it intersects the shoreline at the western breakwater of Sodus Bay. From this intersection, the boundary follows the shoreline roughly west cutting off the mouths of rivers, streams, creeks, and ponds until it intersects the line segment formed between Point 34 and Point 35 where it ends.

The inner landward sanctuary boundary is defined by and follows the shoreline as defined by the low water datum where not already specified in the boundary description



above.

The Tibbetts Point Anchorage Area is excluded from the sanctuary area described above, and its boundary begins at Point TPAA1 and continues to each successive point in numerical order until ending at Point TPAA7.

**§ 922.221 Definitions.**

(a) The following terms are defined for purposes of Subpart U:

*Sanctuary resource* means all historical resources as defined at 15 CFR 922.3, which includes any pre-contact and historic sites, structures, districts, objects, and shipwreck sites within sanctuary boundaries.

*Shipwreck site* means all archaeological and material remains associated with sunken watercraft or aircraft that are historical resources, including associated components, cargo, contents, artifacts, or debris fields that may be exposed or buried within the lake bed.

*Tethered underwater mobile system* means remotely operated vehicles and other systems with onboard propulsion systems that utilize a tether connected to a station-holding (e.g. by anchor, dynamic positioning, or manual vessel operation) surface support vessel.

**§ 922.222 Co-management.**

NOAA has primary responsibility for the management of the Sanctuary pursuant to the Act. However, as the Sanctuary is in state waters, NOAA will co-manage Lake Ontario National Marine Sanctuary in collaboration with the State of New York. The Director may enter into a Memorandum of Agreement regarding this collaboration that may address, but not be limited to, such aspects as areas of mutual concern, including sanctuary resource protection, programs, permitting, activities, development, and threats to sanctuary resources.

**§ 922.223 Prohibited or otherwise regulated activities.**

(a) Except as specified in paragraph (b) of this section, the following activities are

prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Moving, removing, recovering, altering, destroying, possessing or otherwise injuring, or attempting to move, remove, recover, alter, destroy, possess or otherwise injure a sanctuary resource.

(2) Possessing, selling, offering for sale, purchasing, importing, exporting, exchanging, delivering, carrying, transporting, or shipping by any means any sanctuary resource within or outside of the sanctuary.

(3) Grappling into or anchoring on shipwreck sites.

(4) Deploying a tethered underwater mobile system at shipwreck sites.

(5) Interfering with, obstructing, delaying or preventing an investigation, search, seizure or disposition of seized property in connection with enforcement of the Act or any regulation or any permit issued under the Act.

(b) The prohibitions in paragraphs (a)(1) through (5) of this section do not apply to any activity necessary to respond to an emergency threatening life, property, or the environment; or to activities necessary for valid law enforcement purposes.

**§ 922.224 Emergency regulations.**

(a) Where necessary to prevent or minimize the destruction of, loss of, or injury to a sanctuary resource, or to minimize the imminent risk of such destruction, loss, or injury, any and all activities are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

(b) Emergency regulations remain in effect until a date fixed in the rule or six months after the effective date, whichever is earlier. The rule may be extended once for not more than six months.

**§ 922.225 Permit procedures and review criteria.**

(a) A person may conduct an activity otherwise prohibited by §§922.223 (a)(1) through

(4) if conducted under and in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subpart D of this part.

(b) Applications for such permits should be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Highway, Silver Spring, MD 20910.

**§ 922.226 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or right to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by §§ 922.223 (a)(1) through (4) within the sanctuary if such activity is specifically authorized by a valid Federal, state, or local lease, permit, license, or right of subsistence use or of access that is in existence on the effective date of sanctuary designation, provided that the holder of the lease, permit, license, or right of subsistence use or of access complies with § 922.10 and provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of the effective date of the sanctuary designation of the existence and location of such authorization or right and requests certification of such authorization or right; and

(2) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the sanctuary was designated.

(b) Requests for certifications shall be addressed to the Director, Office of National Marine Sanctuaries; ATTN: Sanctuary Superintendent, Lake Ontario National Marine Sanctuary, 1305 East-West Hwy., 11th Floor, Silver Spring, MD 20910 or sent by electronic means as defined in the instructions for the ONMS permit application. A copy of the lease, permit, license, or right of subsistence use or of access must accompany the request.

(c) A certification requester with an authorization or right described in paragraph (a) of

this section authorizing an activity prohibited by §922.223 (a)(1) through (4) may continue to conduct the activity without being in violation of applicable provisions of § 922.223 (a)(1) through (4), pending the Director's review of and decision regarding his or her certification request.

(d) The Director may request additional information from the certification requester as the Director deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the sanctuary was designated. The Director must receive the information requested within 45 days of the date of the Director's request for information. Failure to provide the requested information within this time frame may be grounds for denial by the Director of the certification request.

(e) In considering whether to issue a certification, the Director may seek and consider the views of any other person or entity, within or outside the Federal government, and may hold a public hearing as deemed appropriate by the Director.

(f) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this section, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s) for the decision or action taken.

(g) The Director may amend, suspend, or revoke any certification issued under this section whenever continued operation would otherwise be inconsistent with any terms or conditions of the certification. Any such action shall be forwarded in writing to both the certification holder and the agency that issued the underlying lease, permit, license, or right of subsistence use or of access, and shall set forth reason(s) for the action taken.

(h) The Director may amend any certification issued under this section whenever

additional information becomes available that he or she determines justifies such an amendment.

(i) The certification holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth at § 922.37.

(j) Any time limit prescribed in or established under this section may be extended by the Director for good cause.

(k) It is unlawful for any person to violate any terms and conditions in a certification issued under this section.

**§922.227 Effect on affected federally-recognized Indian tribes.**

The exercise of treaty rights for federally-recognized Indian Tribes and their citizens is not modified, altered, or in any way affected by the regulations promulgated in this subpart. The Director shall consult with the governing body of each federally-recognized Indian Tribe protected by the 1794 Treaty of Canandaigua regarding any matter which might affect the ability of the Tribe's citizens to participate in activities protected by that treaty in the Sanctuary.

**Appendix A to Subpart U of Part 922— Lake Ontario National Marine Sanctuary  
Boundary Description and Coordinates of the Excluded Areas**

[Coordinates listed in this appendix are unprojected (Geographic) and based on the North American Datum of 1983]

Point ID	Longitude	Latitude
1*	-77.37605	43.27611
2	-77.37595	43.28695
3	-77.37586	43.29671
4	-77.37621	43.34516
5	-77.37720	43.37579
6	-77.38799	43.63154

7	-77.38811	43.63443
8	-77.27009	43.63406
9	-77.03338	43.63283
10	-76.79668	43.63112
11	-76.43893	44.09406
12	-76.35283	44.13432
13*	-76.33917	44.12954
14*	-76.31232	44.08230
15*	-76.31207	44.08198
16*	-76.14042	44.07041
17*	-76.13852	44.06959
18*	-76.06446	43.99626
19*	-76.06179	43.99401
20*	-76.50692	43.46890
21*	-76.50783	43.46975
22*	-76.51393	43.47389
23*	-76.51675	43.47341
24*	-76.70792	43.35032
25*	-76.70895	43.35029
26*	-76.72097	43.34356
27*	-76.72141	43.34356
28*	-76.83719	43.30480
29*	-76.83817	43.30492
30*	-76.89154	43.29490
31*	-76.89215	43.29513
32*	-76.97229	43.27682
33*	-76.97398	43.27738
34*	-77.37605	43.27611

35	-77.37595	43.28695
TPAA1	-76.39049	44.08896
TPAA2	-76.37805	44.08940
TPAA3	-76.38611	44.07613
TPAA4	-76.39271	44.06881
TPAA5	-76.41217	44.07577
TPAA6	-76.39897	44.09566
TPAA7	-76.39049	44.08896

**Note:** The coordinates in the table above marked with an asterisk (\*) are not a part of the sanctuary boundary. These coordinates are landward reference points used to draw a line segment that intersects with the shoreline at the low water datum.

## **Appendix B to Subpart U of Part 922— Lake Ontario National Marine Sanctuary**

### **Terms of Designation**

Under the authority of the National Marine Sanctuaries Act, as amended (the “Act” or “NMSA”), 16 U.S.C. 1431 *et seq.*, 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) of Lake Ontario off the coast of New York's coastal counties of Wayne, Cayuga, Oswego, and Jefferson are hereby designated as a National Marine Sanctuary for the purpose of providing long-term protection and management of the cultural and historical resources and the recreational, research, educational, and aesthetic qualities of the area.

### **Article I: Effect of Designation**

The NMSA authorizes the issuance of such regulations as are necessary and reasonable to implement the designation, including managing and protecting the cultural and historical resources and the recreational, research, and educational qualities of Lake Ontario National Marine Sanctuary (the “Sanctuary”). Section 1 of Article IV of this Designation Document lists those activities that may have to be regulated on the effective date of designation, or at some later date, in order to protect Sanctuary resources and qualities. Listing an activity does not necessarily mean that it will be regulated. However, if an activity is not listed it may not be regulated, except on an emergency basis, unless

Section 1 of Article IV is amended by the same procedures by which the original Sanctuary designation was made.

## **Article II: Description of the Area**

Lake Ontario National Marine Sanctuary covers approximately 1,302 nmi<sup>2</sup> (1,724 mi<sup>2</sup>) in eastern Lake Ontario. The boundary coordinates are defined by regulation (15 CFR 922.220).

## **Article III: Special Characteristics of the Area**

Over 1,000 years ago, the Mohawk, Oneida, Onondaga, Cayuga and Seneca Nations were united into the Haudenosaunee Confederacy, under the Gayanashagowa, the Great Law of Peace. Portions of the original homelands of the Onondaga Nation, Cayuga Nation, Seneca Nation, and Oneida Nation lie within the proposed boundaries of the sanctuary. This area was their homeland and they developed a deep understanding of, and had a strong connection to, the land and to the water.

Eastern Lake Ontario represents a diverse array of important events in our Nation's history, including military conflicts, maritime innovation, and American expansion to the west. This area has been a critical nexus of maritime trade and transportation for centuries, beginning with canoes and boats of early Indigenous peoples. During the colonial period, Lake Ontario was a strategic theater of conflict among European powers and the young American republic. Military actions occurred in the region during the French and Indian War, Revolutionary War, and the War of 1812. Later, this region was critical to the development of the American West and the Nation's industrial core.

Well-preserved by cold, fresh water, the shipwrecks and other underwater cultural resources in the proposed sanctuary possess exceptional historical, archaeological and recreational value. Vessels that historically plied Lake Ontario's waters often met with treacherous conditions, which resulted in numerous wrecking events. The area contains a



total of 43 known shipwrecks and one aircraft, including one shipwreck (*St. Peter*) that is listed on the National Register of Historic Places and one wreck (*David Mills*) that is a New York State Submerged Cultural Preserve and Dive Site. This area may also include approximately 20 potential shipwreck sites (shipwrecks which may exist, but additional research is needed to locate and describe these shipwrecks), three aircraft, and 13 other underwater archaeological sites. Represented in the collection are commercial and military vessels from colonial wars and the War of 1812, as well as submerged battlefields at Oswego and Sackets Harbor. Other shipwrecks represent the earliest maritime commerce on the Great Lakes, including the nearly intact *Lady Washington* built in 1797.

#### **Article IV: Scope of Regulations**

##### **Section 1. Activities Subject to Regulation**

The following activities are subject to regulation under the NMSA. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, historical, scientific, educational, cultural, archaeological, or aesthetic resources and qualities of the area. Listing an activity in the Terms of Designation does not mean that such activity is being or will be regulated. Listing an activity here means that Secretary of Commerce can regulate the activity, after complying with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA except an emergency regulation issued with the approval of the Governor of the State of New York may take effect in New York state waters within the sanctuary if the Governor of the State of New York certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five day review period specified in NMSA.

*Activities Subject to Regulation:*

- Injuring or disturbing sanctuary resources;
- Possessing, transporting, or engaging in commerce of any sanctuary resource.
- Grappling into or anchoring on shipwreck sites.
- Deploying tethered underwater mobile systems at shipwreck sites.

## Section 2. Emergencies.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or minimize the imminent risk of such destruction, loss, or injury, any activity and all activities, including those not listed in Section 1, are subject to immediate temporary regulation, including prohibition. An emergency regulation shall not take effect without the approval of the Governor of New York or her/his designee or designated agency.

## **Article V: Alteration of this Designation**

The terms of designation, as defined under Section 304(e) of the Act, may be modified only by the same procedures by which the original designation is made, including public hearings, consultations with interested Federal, Tribal, state, regional, and local authorities and agencies, review by the appropriate Congressional committees, and approval by the Secretary of Commerce, or his or her designee.

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